

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)
U.S. Army, (b) (6))
HHC, U.S. Army Garrison)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

**RULING: DEFENSE MOTION
FOR BILL OF PARTICULARS**

DATED: 15 March 2012

Defense has filed a motion for the Government to provide a Bill of Particulars pursuant to RCM 906(b)(6) and the Fifth, Sixth, and Eights Amendments to the U.S. Constitution. Defense argues that a bill of particulars is necessary for him to understand the charges against him so he may adequately prepare his defense and not be subjected to unfair surprise at trial.

After considering the pleadings, evidence presented, and argument of counsel, the Court finds and concludes the following:

Factual Findings:

1. PFC Manning is charged with:

- a. 5 specifications of violating a lawful general regulation; [Charge III, Specifications 1-5]
- b. 1 specification of aiding the enemy; [Charge I, the Specification]
- c. 1 specification of disorders and neglects to the prejudice of good order and discipline and service discrediting; [Charge II, Specification 1]
- d. 8 specifications of communicating classified information (18 U.S.C. 793(e)); [Charge II, Specifications 2,3,5,7,9,10,11, and 15]
- e. 5 specifications of stealing or knowingly converting Government property (18 U.S.C. 641); [Charge II, Specification 4, 6, 8, 12, and 16]
- f. 2 specifications of knowingly exceeding authorized access to a Government computer (18 U.S.C. 1030(a)(1)); [Charge II, Specifications 13 and 14]

2. Defense seeks the following information in the Bill of Particulars:

a. Violation of a Lawful General Regulation

1. **Specification 1** - What is the alleged conduct the Government believes was an attempt to bypass network or information security mechanisms?
2. **Specifications 2 and 3** - What is the unauthorized software alleged to have been added to the Secret Internet Protocol Router Network Computer?

3. **Specifications 2 and 3** Which computer is the unauthorized software alleged to have been added to the Secret Internet Protocol Router Network Computer?

4. **Specifications 2 and 3** How is the Government alleging the software was added to the Secret Internet Protocol Router Network Computer?

b. Aiding the Enemy

1. Who is the enemy?
2. How did PFC Manning knowingly give intelligence to the enemy?
3. What is the indirect means allegedly used in order to aid the enemy?
4. What "intelligence" is the Government alleging PFC Manning gave to the enemy?

c. Disorders and Neglects to the Prejudice of Good Order and Discipline and Service Discrediting;

1. Who is the enemy?
2. In what manner did PFC Manning wrongfully and wantonly cause intelligence to be published on the internet?

d. Communicating Classified Information (18 U.S.C. 793(e));

1. **Specification 3** Government identify the exact number and specific records it believes supports this specification charged as "more than one classified memorandum produced by a U.S. Government intelligence agency".

2. **Specification 5** - Government identify the exact number and specific records it believes supports this specification charged as "more than twenty classified records from the Combined Information Data Network Exchange Iraq database".

3. **Specification 7** - Government identify the exact number and specific records it believes supports this specification charged as "more than twenty classified records from the Combined Information Data Network Exchange Iraq database".

4. **Specification 9** - Government identify the exact number and specific records it believes supports this specification charged as "more than three classified records from a United States Southern Command database".

5. **Specification 10** - Government identify the exact number and specific records it believes supports this specification charged as "more than five classified records relating to a military operation in Farah Province, Afghanistan occurring on or about 4 May 2009".

6. **Specification 13** - Government identify the exact number and specific records it believes supports this specification charged as "more than seventy-five classified Department of State cables".

e. Stealing, Purloining, or Knowingly Converting Government Property (18 U.S.C. 641);

1. What theory of culpability does the Government rely on "stole", "purloined" or "converted"?

2. If the Government relies on all 3 theories, does each theory of culpability apply equally to every charged item?

f. Knowingly Exceeding Authorized Access to a Government Computer (18 U.S.C. 1030(a)(1));

1. **Specification 13** - How did PFC Manning “knowingly exceed authorized access on a Secret Internet Protocol Router Network computer?”

2. **Specification 14** – How did PFC Manning “knowingly exceed authorized access on a Secret Internet Protocol Router Network computer?”

3. The Government answered all of the questions posed in the defense bill of particulars except the following:

a. **Knowingly Exceeding Authorized Access to a Government Computer (18 U.S.C. 1030(a)(1))**

Specification 13 - How did PFC Manning “knowingly exceed authorized access on a Secret Internet Protocol Router Network computer?”

Specification 14 – How did PFC Manning “knowingly exceed authorized access on a Secret Internet Protocol Router Network computer?”

b. **Violation of a Lawful General Regulation**

Specifications 2 and 3 How is the Government alleging the software was added to the Secret Internet Protocol Router Network Computer?

c. **Stealing, Purloining, or Knowingly Converting Government Property (18 U.S.C. 641); Specifications 4, 6, 8, 12, and 16 of Charge II**

1. What theory of culpability does the Government rely on “stole”, “purloined” or “converted”

2. If the Government relies on all 3 theories, does each theory of culpability apply equally to every charged item?

The Law:

The discussion to RCM 906(b)(6) provides that the purposes of a bill for particulars are to:

- a. inform the accused of the nature of the charge(s) with sufficient precision to enable him to prepare for trial;
- b. avoid or minimize the danger or surprise at the time of trial; and
- c. enable the accused to plead acquittal or conviction in bar of another prosecution when the specification itself is too vague and indefinite for such purpose.

A bill of particulars should not be used to conduct discovery of the Government’s theory of a case, to force detailed disclosure of acts underlying a charge, or to restrict the Government’s proof at trial.

Analysis:

1. The Government responses to the Defense Request for Bill of Particulars are sufficient to satisfy the purpose of a Bill of Particulars.


2. **Specifications 13 and 14 of Charge II:** The question posed by the defense in the bill of particulars - “ How did PFC Manning “knowingly exceed authorized access on a Secret Internet Protocol Router Network computer?” is one that forces the government to reveal detailed disclosures of the acts underlying the charge. The specifications as charged sufficiently inform the accused of the nature of the offense with sufficient precision enabling him to prepare for trial, to avoid or minimize surprise at trial, and to enable the accused to plead acquittal or conviction in bar of another prosecution. Both specifications advise the accused of when and where the charged exceeded authorized access occurred. Both specifications identify the specific computer and information involved. 18 USC 1030(e)(6) defines the term “Exceed authorized access” to mean to access a computer with authorization and to use such access to obtain or alter information in the computer such that the accessor is not entitled so to obtain or alter. This definition and other definitions in the statute provide the defense sufficient notice to prepare for trial.

3. **Specifications 2 and 3 of Charge III** How is the Government alleging the software was added to the Secret Internet Protocol Router Network Computer? This question also requires the government to reveal detailed disclosures underlying both specifications. In specifications 2 and 3 of Charge III, the accused is charged with violating Army Regulation 25-2, paragraph 4-5(a)(3), dated 24 October 2007. In both specifications, the Government followed the model specification in the Manual for Courts-Martial in drafting the charge. This model specification provides for the government to allege how that lawful regulation was violated. In both specifications the government alleges the regulation was violated by the accused in that he added unauthorized software to a Secret Internet Protocol Router Network Computer. The specification provides the defense sufficient notice to prepare for trial.

4. **Specifications 4, 6, 8, 12, and 16 of Charge II** These specifications are charged in the disjunctive in that PFC Manning “stole”, “purloined”, or “converted”. The Government will provide the defense with particulars on which one or all of the three theories the Government will rely upon for specifications 4, 6, 8, 12, and 16. The 2nd question posed by the defense “If the Government relies on all 3 theories, does each theory of culpability apply equally to every charged item?” is beyond the scope of a bill of particulars and seeks detailed information regarding the Government theory of the case.

RULING: Defense Motion for Bill of Particulars is Granted in Part and Denied in Part.

ORDERED, this the 15th day of March 2012.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit